

### **REMARKS**

This is in response to the non-final Office Action mailed November 14, 2008. In the Office Action, the Examiner notes that claims 1 – 20 are pending and rejected.

Applicants do not acquiesce to the Examiner's characterizations of the art cited by the Examiner or to Applicants' subject matter recited in the pending claims and do not concede that those amended. Further, Applicants are not acquiescing to the Examiner's statements as to the applicability of the art of record to the pending claims by filing the instant response.

In view of the following discussion, Applicants submit that none of the claims now pending in the application is being anticipated under the provisions of 35 U.S.C. §103.

### **35 U.S.C. §102 Rejection of Claims 1 – 5, 7 – 13, and 16 – 20**

The Examiner has rejected claims 1 - 5, 7 – 13, and 16 – 20 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Publication No. 2005/0028208 to Ellis et al. (Hereinafter, "Ellis"). Applicants respectfully traverse the rejection.

Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim. Ellis fails to disclose each and every element of the claimed invention, as arranged in independent claims 1, 10, and 20.

#### **Claims 1 and 10**

Applicants' claim 1 recites:

"receiving, at a control unit, a directive for a television distribution system operator to use a particular terminal under control of the system operator and remote from the subscriber equipment to monitor a particular channel within a plurality of channels transmitted from a head-end of the provider equipment to the subscriber equipment through a distribution node of the television distribution system, wherein the directive is received at the control unit through a communications means not including the distribution node of the television distribution system"

(emphasis added).

The Examiner suggests that this limitation is taught by Ellis. In particular, that Examiner equates a remote user of Ellis to the television distribution system operator,

because “in the essence, the remote user is the television distribution operator since the remote user controls what the subscriber watches.” Applicants’ respectfully disagree.

According to Ellis, the remote user is provided with an opportunity to adjust program guide settings with a given one of the interactive television program guides. Program guide settings include features related to setting program reminders, profiles, program recording features, messaging features, favorite features, parental control features, program guide set-up features and so on (see Ellis, Abstract). However, all of the adjustable program guide features are defined by the subscription of that particular remote user. The remote user cannot adjust features of other subscribers, and thus, cannot be considered as the television distribution system operator.

While the pending claims must be given a broadest reasonable interpretation, the interpretation must be consistent with the specification, which the pending claims are based upon. See *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005). In other words, the claims should be reasonably construed “in light of the specification as it would be interpreted by one of ordinary skill in the art.” See *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). No person skilled in the art, after considering Applicants’ specification and/or Applicants’ claims, would have reasonably interpreted Applicants’ “television distribution system operator” as suggested by the Examiner.

Furthermore, assuming *arguendo* that the remote user is the television distribution system operator, Ellis fails to disclose that such an operator receives at a control unit a directive to use a particular terminal. In fact, the Examiner states that “the remote user inputs the directive to monitor what the other user at home is viewing” (see Office Action, page 4). This is the exact opposite of the user receiving the directive, as claimed by Applicants. Therefore, according to the Examiner’s own rationale, Ellis does not teach all of the limitations of claim 1.

In particular, the Examiner suggests that the ‘particular terminal’ of claim 1 is the remote program guide access device 24 of Ellis. However, Ellis does not describe that the remote user receives a directive indicating which particular remote program guide access device the user should use, a directive indicating which particular channel the user should monitor, or a directive indicating both of these choices. Rather, the user

himself chooses which remote program guide access device to use and which channels to monitor (e.g., according to the Examiner's interpretation, which channels to block, so a child could not access such channels). Accordingly, Ellis simply cannot teach "receiving, at a control unit, a directive for a television distribution system operator to use a particular terminal ... to monitor a particular channel within a plurality of channels transmitted from a head-end of the provider equipment."

Further, the Examiner suggests that the remote program guide access device 24 of Ellis anticipates two distinct elements of Applicants' claim 1, i.e., the control unit and particular terminal. In fact, according to the Examiner's interpretation of Ellis in light of Applicants' claim 1, the remote program guide access device 24 receives a directive for the remote user to use that remote program guide access device, where such a directive is inputted by the remote user at the remote program guide access device. Moreover, the directive is received at the remote program guide access device through a communication means not including the distribution node of the television distribution system because the programming is received over link 20 connecting user television equipment 22 and television distribution facility 16 of Fig. 2b (see Office Action, page 4). Such an interpretation of Ellis simply does not make sense. For example, if link 20 represents the Applicants' communication means, how such a communication means does not include a distribution node of the television distribution system, when the link 20 leads directly into the televising distribution facility 16 and before ever reaching the remote program guide access device 24 (Applicants' control unit according to the Examiner). Accordingly, Applicants respectfully request the Examiner to clarify his position.

Therefore, Ellis does not teach or suggest each and every one of the limitations of Applicants' independent claim 1. As such, Applicants submit that independent claim 1 is not anticipated by Ellis and is allowable under 35 U.S.C. §102. Independent claim 10 recites limitations similar to the limitations of claim 1 that were discussed above. Accordingly, for at least the reasons discussed above, claim 10 is also allowable under 35 U.S.C. §102 over Ellis.

Claim 20

First, independent claim 20 recites limitations similar to the limitations of claim 1 that were discussed above. Accordingly, for at least the reasons discussed above, claim 20 is also allowable under 35 U.S.C. §102 over Ellis.

Furthermore, Applicants respectfully request the Examiner to clarify the rejection of claim 20. In particular, besides the above discussed limitations of claim 1, claim 20 recites additional limitations that are not present in claim 1. For example, claim 10 recites “a plurality of terminals,” while claim 1 does not. However, the Examiner states that claim 20 contains the limitations of claim 1 and is analyzed in the same manner as claim 1. Accordingly, Applicants respectfully request that the Examiner indicates specific portions of Ellis supporting the rejection of each of the elements and limitations of claim 20 or withdraws the rejection.

Claims 2 - 5, 7 - 9, 11 - 13, and 16 - 19

Because all of the dependent claims that depend from the independent claims include all the limitations of the respective independent claim from which they ultimately depend, each such dependent claim is also not anticipated by Ellis and is allowable under 35 U.S.C. §102.

Therefore, Applicants respectfully request that the Examiner's rejection be withdrawn.

**Rejection under 35 U.S.C. §103****Claim 6**

The Examiner has rejected claim 6 under 35 U.S.C. §103(a) as being unpatentable over Ellis in view of Simsic, U.S. Patent No. 6,269,484 (hereinafter “Simsic”). Applicants respectfully traverse the rejection.

This ground of rejection applies only to dependent claim and is predicated on the validity of the rejection under 35 U.S.C. §102 given Ellis. Because the rejection under 35 U.S.C. §102 given Ellis has been overcome, as described hereinabove, and there is no argument put forth by the Office Action that Simsic supplies that which is missing

from Ellis to render the independent claims anticipated, this ground of rejection cannot be maintained.

Therefore, Applicants' claim 6 is allowable over Ellis in view of Simsic under 35 U.S.C. §103. The Examiner is respectfully requested to withdraw the rejection.

#### **Claims 14 and 15**

The Examiner has rejected claims 14 and 15 under 35 U.S.C. §103(a) as being unpatentable over Ellis in view of Blumenau. Applicants respectfully traverse the rejection.

These grounds of rejection apply only to dependent claims and are predicated on the validity of the rejection under 35 U.S.C. §102 given Ellis. Because the rejection under 35 U.S.C. §102 given Ellis has been overcome, as described hereinabove, and there is no argument put forth by the Office Action that Blumenau supplies that which is missing from Ellis to render the independent claims anticipated, this ground of rejection cannot be maintained.

Therefore, Applicants' claims 14 and 15 are allowable over Ellis in view of Blumenau under 35 U.S.C. §103. The Examiner is respectfully requested to withdraw the rejection.


**CONCLUSION**

Thus, Applicants submit that none of the claims presently in the application are anticipated or obvious under the respective provisions of 35 U.S.C. §§102 or 103. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Eamon J. Wall, at (732) 842-8110 x 120, so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

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